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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,693	01/02/2002	Richard S. Chomik	460.2118USU	5356

7590 09/02/2004

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EXAMINER

NOLAN, SANDRA M

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/032,693

Applicant(s)

CHOMIK ET AL.

Examiner

Sandra M. Nolan

Art Unit

1772

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 23 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See the attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 1-13.

Claim(s) withdrawn from consideration: 14-26.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Attachment to Advisory Action

Claims

1. Claims 1-26 are pending.
2. Claims 14-26 are withdrawn.

Non-entry of Proposed Amendment

3. The amendment proposed in the 23 August 2004 response has been entered because it would involve the introduction of new matter into the claims.
4. The term "positionable" is not supported by the original disclosure.

Rejection Withdrawn

5. In view of applicants' arguments on pages 8 and 9 of the 23 August 2004 response, the 35 USC 112 rejection of claims 1-13 for new matter is withdrawn.

Rejection Maintained

6. The 35 USC 103 rejection of claims 1-13 as unpatentable over Richards et al (US 4,934,529) in view of Van Gelder (WO 02/42364, Feaver et al (US 4,890,934) and the JP 02081801A abstract, as recited in section 11 of the 23 April 2004 office action, is maintained for reasons of record.

Response to Arguments

7. Applicant's arguments filed in the 23 August 2004 response have been fully considered but they are not persuasive.

The arguments will be responded to in the order in which they were presented.

On pages 8-9 of the response, applicants argue that the 35 USC 12 rejection should be withdrawn. It has been withdrawn.

On page 10, applicants argue that Richards fails to teach monolayer high density polyethylene film resin with both a low melt index and a high density, which resin is positionable in an annular space of a cassette and adapted to form discrete areas of enclosure of waste.

However, Richards—which applicants have admitted shows cassettes for dispensing flexible high density polyethylene tubing—is not the sole reference used in the rejection. The other references show and/or suggest the recited features not taught by Richards.

Also, it is noted that “positionable” is not recited in the claims because the amendment proposed in the 23 August 2003 response was not entered.

On page 10, applicants argue that Feaver fails to teach bags that are positionable in a cassette and adapted to form discrete areas for enclosure of waste. Also, they argue that there is no motivation to combine Feaver’s teachings with those of Richards.

However:

- a. The term “positionable” has not been entered in the claims.
- b. Feaver is not the sole reference used in the rejection. The other references show and/or suggest the recited features not taught by Feaver.
- c. The combination of Richards and Feaver is suggested by their common subject matter—i.e., polyethylene containers.

On page 10, applicants argue that the Japanese abstract fails to teach monolayer high density polyethylene film resin with both a low melt index and a high

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density, which resin is positionable in an annular space of a cassette and adapted to form discrete areas of enclosure of waste.

However, JP 02081801A—which applicants have admitted shows monolayer disposable bags of polyethylene formed with deodorants—is not the sole reference used in the rejection. The other references show and/or suggest the recited features not taught by the Japanese abstract.

On page 11, applicants argue that Van Gelder fails to teach monolayer high density polyethylene film resin with both a low melt index and a high density, which resin is positionable in an annular space of a cassette and adapted to form discrete areas of enclosure of waste.

However, Van Gelder—which applicants have admitted shows the introduction of fragrance into films—is not the sole reference used in the rejection. The other references show and/or suggest the recited features not taught by the Japanese abstract.

Note, too, that Van Gelder was cited, in section 11 of the 23 April 2004 office action, as teaching bags for dirty diapers made of polyethylene.

In sum, the 35 USC 103 rejection is deemed proper and is maintained.

Conclusion

Any inquiry concerning this communication should be addressed to Sandra M. Nolan, at telephone number 571/272-1495. She can normally be reached Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time.

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If attempts to reach the examiner are unsuccessful, her supervisor, Harold Pyon, can be reached at 571/272-1498.

The fax number for patent application documents is 703/872-9306.



S. M. Nolan
Primary Examiner
Technology Center 1700

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